

FEDERAL ELECTION COMMISSION Washington, DC 20463

August 14, 2019

MEMORANDUM

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The Commission

FROM:

Lisa J. Stevenson

Acting General Counsel

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Charles Kitcher

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Acting Associate General Counsel

for Enforcement

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Stephen Gura

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Deputy Associate General Counsel

for Enforcement

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BY:

Mark Shonkwiler

Assistant General Counsel

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22 SUBJECT: MUR 7467 (Freedom's Defense Fund)

23 24 RE:

Pre-Probable Cause Conciliation Agreement

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The Commission found reason to believe that Freedom's Defense Fund and Paul Kilgore in his official capacity as treasurer ("FDF") violated 52 U.S.C. §§ 30104(b)(4)(H)(iii), 30104(b)(8), and 30104(g)(2) and 11 C.F.R. §§ 104.3(d), 104.4, and 104.11 by failing to properly report its independent expenditures, failing to file 48-hour reports of expenditures, and failing to properly report its debts and obligations. The Commission also authorized preprobable cause conciliation and approved a conciliation agreement

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In response to the Commission's reason to believe finding, FDF, which did not respond to Requests for Additional Information ("RFAI") or the notification that it had been referred,

MUR 7467, Certification ¶ 2 (Aug. 8, 2018).

 submitted an extensive explanation for each of the violations outlined in the Factual and Legal Analysis.³ Primarily, FDF explained that its 48-hour reports of independent expenditures ("IEs") did not match up with its quarterly reports because its 48-hour reports had listed *estimated* costs of payments made to its direct mail management firm, ForthRight Strategy, Inc., while the amended reports it submitted later listed *actual* costs and sub-vendor information.⁴

On June 6, 2019, FDF filed two Miscellaneous Texts (Form 99) that explain its independent expenditure ("IE") reporting.⁶ These Form 99s, however, were filed three years after RAD sent RFAIs to FDF, and over six months after FDF filed its RTB response.⁷ FDF's post-RTB submission also identified various entries on its disclosure reports relating to its outstanding debts. After reviewing this the new information, RAD concluded that it was confusing, and did not resolve the concerns that led to the referral of this issue. We engaged in multiple rounds of follow-up with FDF seeking clarification of the debt reporting explanation. FDF's new treasurer seemed to have difficulty understanding the methodology behind the entries made by the former treasurer. Ultimately, Respondents acknowledged that the debt reporting entries were incomplete and inconsistent. FDF is currently working with RAD to clarify its debt reporting.

We have considered FDF's response and RAD's assessments, and under these circumstances, we recommend that the Commission accept the attached negotiated agreement

See Factual and Legal Analysis at 3, MUR 7467; FDF Reason to Believe Response ("RTB Resp.") (Nov. 15, 2018) and Ex. A (Nov. 13, 2018); see also Email from FDF Counsel to FEC (Apr. 1, 2019, 11:40 AM EST) (providing additional clarifications concerning its IE reporting).

See RTB Resp. at Ex. A. Those amendments disclosing actual costs and sub-vendor information, however, were submitted several months and up to a year after the original reports.

See Miscellaneous Texts, Form 99 (June 6, 2019).

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Under the circumstances, including the change in treasurer and the recent efforts to work with RAD to correct its reporting, we believe that the negotiated agreement represents an acceptable resolution of this matter and we recommend that the Commission approve it.

RECOMMENDATIONS

- 1. Approve the attached conciliation agreement with Freedom's Defense Fund and Paul Kilgore in his official capacity as treasurer;
- 2. Approve the appropriate letter;
- 24 3. Close the file.